IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 269 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIVANBHAI JAFFARBHAI NAYAK

Versus

AMARKHAN SUBROTHIKHAN PATHAN

Appearance:

MR YOGESH S LAKHANI for Petitioner

Mr S P Dave, APP for Respondent No. 7

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 09/04/2001

ORAL JUDGEMENT

This is a Revision Application filed under section 397 of the Criminal Procedure Code, 1973 (for short, 'the Code') for setting aside the judgment and acquittal order dated 4.4.2000 recorded by the learned

Sessions Judge, Valsad, Navsari in Sessions Case No.118/99 under which the learned Trial Judge acquitted the present respondents from the charges levelled against them for offence punishable under section 397 read with Section 120-B of the Indian Penal Code. The case of the prosecution before the trial court was that on 10.2.1999, the present respondents committed assault and caused injuries and committed robbery in respect of cash on hand of the bus-conductor Bharatbhai Maganbhai Patel and committed the aforesaid offence as part of the criminal conspiracy between them.

2. The learned trial Judge, who heard the matter, had framed charge and after appreciation of evidence, he recorded the order of acquittal which is under challenge in this Revision Application by the original complainant.

3. On going through the evidence it is very clear that the prosecution has examined in all five witnesses. Out of them Jivanbhai, PW 1 at Exh.14 is not a witness to the incident and, therefore, he was not in a position before the trial court to say anything about the present respondents. He has produced FIR at Exh.15. However, the informant was not in a position to say anything about the present respondents and, therefore, his evidence does not connect the present respondents or any of them with the crime in question. Bharatbhai Patel, PW 2, has been examined by the prosecution at Exh.16. He was injured eye witness but he did not spot the respondents and even before the Court when the trial was going on, this witness was unable to locate any of the respondents. Therefore, his evidence does not support the prosecution on the point of involvement of the present respondents in the aforesaid offence. Then, there is further evidence of Nasirudin at Exh.18, who is panch witness. It appears that discovery panchnama was drawn in his presence showing that one of the respondents discovered muddamal bag and other articles. The question is as to whether the discovery panchnama can be considered as substantive evidence to convict the accused persons.

4. I am of the opinion that the discovery panchnama may be carrying probative value. which may corroborate the evidence substantively produced by the prosecution but independently it cannot become an evidence to connect the accused persons with the crime. Therefore, if there is some other evidence on record, even the discovery panchnama can support and/or corroborate that evidence but in absence of any other evidence it would not be possible to depend upon the sole evidence of discovery panchnama. It has been well settled in AIR 1977 SC 472

that the evidence on recovery of weapons at the instance of accused persons would, at the best be corroborative evidence, which really shows that it cannot be used as substantive evidence and the conviction cannot be based solely on the strength of discovery panchnama. It is true that a statement made in a dying declaration can be used as substantive evidence and the conviction can be based thereon. But there is much difference between a statement made in the dying declaration and a statement of accused person made during the course of discovery panchnama. Therefore, even if a statement is made before the police by an accused at the discovery panchnama of muddamal article involved in an offence which has actually been discovered on the strength of the said statement made by the accused in presence of police and panchas then also this evidence cannot be used as substantive evidence and no conviction can be passed solely on the strength of discovery panchnama, though such a statement made by such an accused person is not inadmissible in evidence.

5. Then there is evidence of Nitin Nandkishan P.W.4 at Exh.22, in whose compound the injured Bharatbhai Patel was found lying. He has been examined at Exh.22 but he does not say anything about the incident as he was not present when the incident took place. He was not present when the injured eye witness was brought to his compound. He does not know when the injured eye witness came to his compound. He found the injured in his compound but he has not witnessed the incident and he could not connect the present accused with the crime. Last witness Rambhai Chhaganbhai, PW 5 at Exh.23 is Investigating Police Officer, who naturally does not know anything about the offence said to have been committed by the respondents in the present case. The prosecution has proved evidence of discovery panchnama but as said above, the discovery panchnama cannot become basis for the conviction of the present respondents when there is no other evidence connecting them with the crime in question. It is well settled that even the court exercising jurisdiction under section 378 of the Code in an acquittal appeal, it should be slow and reluctant to interfere with the acquittal judgment unless the same is perverse, unjust and not based on evidence on record as said in the case of State of Gujarat v. Mansukh Lavchand, reported in 1993 (2) GLH 849. When the Court exercising its appellate jurisdiction in an acquittal appeal, has to be slow, then it must be said that the revisional court hearing acquittal revision has to be slower and it cannot claim powers more than those of an appellate court exercising appellate jurisdiction in an acquittal appeal.

Therefore, even if two views are possible, it is not possible for this court to substitute this court's view for the view adopted by the trial court which had an advantage of witnessing the witness while giving evidence from the witness box. Taking the matter from any corner and from any angle, it is clear that the trial court has not committed any illegality in appreciation of evidence and reappreciation of evidence in this Revision is not permissible. Therefore, the judgment and order passed by the trial court are not found to be illegal and perverse and therefore, the same do not require any interference in this Revision. Consequently, this Revision Application deserves to be dismissed at the admission stage.

6. In the result, this Revision Application is dismissed.

9.4.2001 [D P Buch, J.]
msp